



# FEDERAL ACQUISITION CIRCULAR

March 2, 1993

Number 90-17

Federal Acquisition Circular (FAC) 90-17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-17 is effective March 2, 1993.



## **FAC 90-17 SUMMARY**

Federal Acquisition Circular (FAC) 90-17 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Issuance of Final Rule to Implement Executive Order 12836, Revocation of Certain Executive Orders Concerning Federal Contracting**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a final rule that removes subparts 22.5 and 22.15, sections 52.222-5 and 52.222-18, and amends section 36.101 by rescinding two interim rules published in the Federal Register at 57 FR 55470, November 25, 1992, concerning Open Bidding on Federal Construction Contracts, and 57 FR 20372, May 12, 1992, concerning Notification of Employee Rights Concerning Payment of Union Dues or Fees.

**Replacement pages:** TOC, Part 22 (pp. 1 thru 3), 22-17 thru 22-20, 22-41 and 42, 36-1 and 36-2, TOC, Part 52 (pp. 3 & 4), 52-89 thru 52-94, and 52-317 thru 52-318.1.

## **FAC 90-17 FILING INSTRUCTIONS**

### Remove Pages

TOC, Part 22  
(pp. 1 thru 3)  
22-17 thru 22-20.1  
22-41 thru 22-43

36-1 and 36-2

TOC, Part 52  
(pp. 3 & 4)  
52-89 thru 52-94.1  
52-317 thru 52-318.1

### Insert Pages

TOC, Part 22  
(pp. 1 thru 3)  
22-17 thru 22-20  
22-41 and 22-42

36-1 and 36-2

TOC, Part 52  
(pp. 3 & 4)  
52-89 thru 52-94  
52-317 thru 52-318.1



Comptroller General, Claims Division, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, funds withheld or collected for liquidated damages shall be disposed of in accordance with agency procedures.

#### **22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

- (1) Misclassification of workers;
- (2) Hours of work;
- (3) Wage rates and payment;
- (4) Payment of overtime;
- (5) Withholding practices; and
- (6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.

(2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

(d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.

(e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the Labor Department Wage Appeals Board are conducted in accordance with 29 CFR Part 7.

(f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-

Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under Section 3(a) of that Act.

#### **22.406-11 Contract terminations.**

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, and the Comptroller General. The report shall include—

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and
- (e) A description of the work.

#### **22.406-12 Cooperation with the Department of Labor.**

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, or the Copeland (Anti-Kickback) Act.

#### **22.406-13 Semiannual enforcement reports.**

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

#### **22.407 Contract clauses.**

(a) The contracting officer shall insert the following clauses in solicitations and contracts in excess of \$2,000

(FAC 90-17) 22-17

## 22.601

## FEDERAL ACQUISITION REGULATION (FAR)

for construction within the United States:

- (1) The clause at 52.222-6, Davis-Bacon Act.
- (2) The clause at 52.222-7, Withholding of Funds.
- (3) The clause at 52.222-8, Payrolls and Basic Records.
- (4) The clause at 52.222-9, Apprentices and Trainees.
- (5) The clause at 52.222-10, Compliance with Copeland Act Requirements.
- (6) The clause at 52.222-11, Subcontracts (Labor Standards).
- (7) The clause at 52.222-12, Contract Termination-Debarment.
- (8) The clause at 52.222-13, Compliance with Davis-Bacon and Related Act Regulations.
- (9) The clause at 52.222-14, Disputes Concerning Labor Standards.
- (10) The clause at 52.222-15, Certification of Eligibility.
- (b) The contracting officer shall insert the clause at 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.
- (c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402(b) the requirements of this subpart apply to the construction work, the contracting officer shall insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.
- (d) The contracting officer shall insert the clause at 52.222-17, Labor Standards for Construction Work—Facilities Contracts, in solicitations and contracts, if a facilities contract (see 45.301) may require covered construction work (see 22.402(b)) to be performed in the United States.

## SUBPART 22.5—RESERVED

## SUBPART 22.6—WALSH-HEALEY PUBLIC CONTRACTS ACT

## 22.601 Definitions.

“Assembly,” as used in this subpart, means the piecing or bringing together of various interdependent or interrelated parts or components so as to make an operable whole or unit.

“Manufacturer,” as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

“Person,” as used in this subpart, includes associations,

corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

“Regular dealer,” as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

## 22.602 Statutory requirements.

Except for the exemptions at 22.604, all contracts subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45) and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding \$10,000, shall—

(a) Be with manufacturers or regular dealers in the supplies manufactured or used in performing the contract; and

(b) Include or incorporate by reference the representation that the contractor is a manufacturer or a regular dealer of the supplies offered, and the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

## 22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed \$10,000, unless exempted under 22.604.

## 22.604 Exemptions.

## 22.604-1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the Act:

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase “in the open market” generally; or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency.

(b) Perishables, including dairy, livestock, and nursery products.

(c) Agricultural or farm products processed for first sale by the original producers.

(d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

#### **22.604-2 Regulatory exemptions.**

(a) Contracts for the following acquisitions are fully exempt from the Act (see 41 CFR 50-201.603):

- (1) Public utility services.
- (2) Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.
- (3) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.
- (4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b) Contracts of the following type are partially exempt from the Act (see 41 CFR 50-201.604):

- (1) Contracts with certain coal dealers.
- (2) Certain commodity exchange contracts.
- (3) Contracts with certain export merchants.
- (4) Contracts with small business defense production pools, and small business research and development pools.
- (5) Contracts with public utilities for the acquisition of certain uranium products.

(c)(1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations; provided, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

#### **22.605 Rulings and interpretations of the Act.**

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the Act (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to the Act for work performed after the date of the modification.
- (2) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract is not subject to the Act for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor con-

tains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the Act in contracts in excess of \$10,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(4) If a contract subject to the Act is awarded to a contractor operating Government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) Reserved.

#### **22.606 Eligibility as a manufacturer or regular dealer.**

##### **22.606-1 Manufacturer.**

(a) An offeror qualifies as a manufacturer under the criteria in 41 CFR 50-206.51 and 50-206.52 if it shows before the award that it is—

- (1) An established manufacturer—
  - (i) Of the particular supplies of the general character sought by the Government; and
  - (ii) That has a plant, equipment, and personnel to manufacture on the premises the items called for under the contract; or
- (2) Newly entering into a manufacturing activity and has made all necessary arrangements and commitments for—
  - (i) Manufacturing space;
  - (ii) Equipment; and
  - (iii) Personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract.

(b) An offeror that is newly entering into a manufacturing activity must show under the criteria in 41 CFR 50-206.51(b) that the offeror—

- (1) Has made written, legally binding arrangements or commitments to enter a manufacturing business. (An offeror should not be barred from receiving the award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of a Government contract.);
- (2) Has not been set up solely to produce on a Government contract and that its operations will not be terminated upon completion of that contract;
- (3) Has established arrangements for production on a

continuing basis of the particular materials, supplies, or equipment desired by the Government; and

(4) Has documentation to prove that necessary written, legally binding arrangements or commitments have been met before award.

(c) Every offeror must qualify as a manufacturer in its own rights under the criteria in 41 CFR 50-206.51(e) and (f), and must show the following:

(1) That it is currently capable of manufacturing on its premises the supplies called for under the contract or, if it is newly entering into manufacturing, that it has made written, legally binding commitments before award to enable it to produce such supplies on its premises. (The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement.)

(2) That all evidence documenting the making of necessary prior arrangements or definite commitments is in the name of the offeror.

(d) Generally, an offeror that performs assembly operations as described in 41 CFR 50-206.52 may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end item to be supplied to the Government, and it—

(1) Produces end items on its premises by assembling component parts using machines, tools, workers, and the assembly constitutes substantial or significant fabrication or production of the end item; or

(2) Has the facilities to produce on its premises a significant portion of the required component parts needed for the end item for which the Government contracted even if it only performs assembly operations under a particular acquisition.

(e) An offeror's eligibility status as a prime contractor or a subcontractor on other contracts subject to the Act is not determinative evidence of the offeror's present eligibility as a manufacturer (see 41 CFR 50-206.51(g)).

#### **22.606-2 Regular dealer.**

(a) An offeror qualifies as a regular dealer under the criteria in 41 CFR 50-206.53 if it shows before the award that it is a regular dealer dealing in the particular supplies of the general character offered to the Government. Included in the criteria in 41 CFR 50-206.53 which an offeror must meet are the following:

(1) It has an establishment, or a leased or assigned space, in which it regularly maintains a stock of supplies in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(2) The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by (i) a stock of sample or display items, (ii) a stock

consisting of surplus items remaining from prior orders, (iii) stock unrelated to the supplies offered, or (iv) a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(3) The supplies stocked are of the same general character as those to be supplied under the contract. To be of the same general character, the items to be supplied must be either identical with those in stock or be supplies for which dealers in the same line of business would be an obvious source.

(4) Sales are made regularly from stock on a recurring basis, are not only occasional, or constitute an exception to the usual operations of the business. The proportion of sales from stock that will satisfy this requirement will depend upon the character of the business.

(5) Sales are made regularly in the usual course of business to the public; i.e., to purchasers other than Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(6) The business is an established and going concern. It is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, and specialty advertising products), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are in 41 CFR 50-201.101(a)(2) and 50-201.604.

(c) Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions prescribed by the Secretary of Labor in 41 CFR 50-201.604(a). If these terms and conditions are not met, coal dealers must meet the requirements in this subsection.

#### **22.607 Agents.**

A "manufacturer" or "regular dealer" may bid, negotiate, and contract through an authorized agent if the agency is disclosed and the agent acts and contracts in the name of the principal (see Subpart 3.4, Contingent Fees).

#### **22.608 Procedures.**

##### **22.608-1 Offeror's representation.**

For each solicitation that may result in a contract subject to the Act, the contracting officer shall obtain a representa-



requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of sealed bidding unless it is made more than 10 calendar days before the date set for bid opening.

#### **22.1304 Department of Labor notices and reports.**

(a) The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Director.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, have been waived (see 22.1303). The contractor shall use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

#### **22.1305 Collective bargaining agreements.**

If performance under the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor (DOL) will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

#### **22.1306 Complaint procedures.**

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the Veteran's Employment Service of the DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of the Office of Federal Contract Compliance Programs of the DOL is primarily responsible for making investigations of complaints.

#### **22.1307 Actions because of noncompliance.**

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Affirmative Action for Special

Disabled and Vietnam Era Veterans. These sanctions (see 41 CFR 60-250.28) may include—

- (a) Withholding from payments otherwise due;
- (b) Termination or suspension of the contract; or
- (c) Debarment of the contractor.

#### **22.1308 Contract clauses.**

(a)(1) The contracting officer shall insert the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in solicitations and contracts when the contract is for \$10,000 or more or is expected to amount to \$10,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, "United States" includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(ii) The agency head has waived, in accordance with 22.1303(a) or 22.1303(b) all of the terms of the clause.

(2) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans.

### **SUBPART 22.14—EMPLOYMENT OF THE HANDICAPPED**

#### **22.1400 Scope of subpart.**

This subpart prescribes policies and procedures for implementing Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

#### **22.1401 Policy.**

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination based on their physical or mental handicap.

#### **22.1402 Applicability.**

(a) Section 503 of the Act applies to all Government contracts in excess of \$2,500 for supplies and services

## 22.1403

(including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Affirmative Action for Handicapped Workers, implements the Act.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Handicapped Workers, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

**22.1403 Waivers.**

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), may waive any or all of the terms of the clause at 52.222-36, Affirmative Action for Handicapped Workers, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or (2) the Secretary of Defense, may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of sealed bidding unless it is made more than 10 calendar days before the date set for bid opening.

**22.1404 Department of Labor notices.**

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. The contracting officer may obtain these notices from the Department

## FEDERAL ACQUISITION REGULATION (FAR)

of Labor Regional Office, Office of Federal Contract Compliance Programs.

**22.1405 Collective bargaining agreements.**

If performance under the clause at 52.222-36, Affirmative Action for Handicapped Workers, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

**22.1406 Complaint procedures.**

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the OFCCP, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional or area office. The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record.

**22.1407 Actions because of noncompliance.**

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Affirmative Action for Handicapped Workers. These sanctions (see 41 CFR 60-741.28) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

**22.1408 Contract clause.**

(a) The contracting officer shall insert the clause at 52.222-36, Affirmative Action for Handicapped Workers, in solicitations and contracts that exceed \$2,500 or are expected to exceed \$2,500, except when—

(1) Work is performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, "United States," includes the States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(2) The agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its Alternate I.

## PART 36

### CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### 36.000 Scope of part.

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

#### SUBPART 36.1—GENERAL

##### 36.101 Applicability.

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include (1) clauses applicable to the predominant part of the work (see Subpart 22.4), or (2) if the contract is divided into parts, the clauses applicable to each portion.

##### 36.102 Definitions.

"Architect-engineer services", as defined in 40 U.S.C. 541, means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of

operating and maintenance manuals, and other related services.

"As-built drawings," see record drawings.

"Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

"Contract," as used in this part, is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

"Firm," as used in this part in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"Plans and specifications," as used in this part, means drawings, specifications, and other data for and preliminary to the construction.

"Record drawings," as used in this part, means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

"Shop drawings," as used in this part, means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, (2) the installation (i.e., form, fit, and attachment details) of materials or equipment, or (3) both.

##### 36.103 Methods of contracting.

(a) Contracting officers shall acquire construction using sealed bid procedures if the conditions in 6.401(a) apply, except that sealed bidding need not be used for construction contracts to be performed outside the United States, its possessions, or Puerto Rico. (See 6.401(b)(2).)

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, Subpart 36.6, and agency regulations.

## SUBPART 36.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

### 36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction Contracts), for each construction contract of—

(i) \$500,000 or more; or

(ii) More than \$10,000, if the contract was terminated for default.

(2) The report shall be prepared at the time of final acceptance of the work, at the time of contract termination, or at other times, as appropriate, in accordance with agency procedures. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* (1) Each performance report shall be distributed in accordance with agency procedures. One copy shall be included in the contract file. The contracting activity shall retain the report for at least six years after the date of the report.

(2) Before making a determination of responsibility in accordance with Subpart 9.1, the contracting officer may consider performance reports in accordance with agency instructions.

### 36.202 Specifications.

(a) Construction specifications shall conform to the requirements in Part 10 of this regulation.

(b) Whenever possible, contracting officers shall ensure that references in specifications are to widely recognized standards or specifications promulgated by governments, industries, or technical societies.

(c) When "brand name or equal" descriptions are necessary, specifications must clearly identify and describe the particular physical, functional, or other characteristics of

the brand-name items which are considered essential to satisfying the requirement.

### 36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to cost \$25,000 or more. The contracting officer may require an estimate when the cost of required work is anticipated to be less than \$25,000. The estimate shall be prepared in as much detail as though the Government were competing for award.

(b) When two-step sealed bidding is used, the independent Government estimate shall be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.

### 36.204 Disclosure of the magnitude of construction projects.

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

(a) Less than \$25,000.

(b) Between \$25,000 and \$100,000.

(c) Between \$100,000 and \$250,000.

(d) Between \$250,000 and \$500,000.

(e) Between \$500,000 and \$1,000,000.

(f) Between \$1,000,000 and \$5,000,000.

(g) Between \$5,000,000 and \$10,000,000.

(h) More than \$10,000,000.

### 36.205 Statutory cost limitations.

(a) Contracts for construction shall not be awarded at a cost to the Government—

(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

- 52.215-30 Facilities Capital Cost of Money.
- 52.215-31 Waiver of Facilities Capital Cost of Money.
- 52.215-32 Certification of Commercial Pricing for Parts or Components.
- 52.215-33 Order of Precedence.
- 52.215-34 Evaluation of Offers for Multiple Awards.
- 52.215-35 Annual Representations and Certifications—Negotiation.
- 52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).
- 52.215-37 Commercial Pricing Certificate—Notice.
- 52.215-38 Preparation of Offers—Construction.
- 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
- 52.216-1 Type of Contract.
- 52.216-2 Economic Price Adjustment—Standard Supplies.
- 52.216-3 Economic Price Adjustment—Semistandard Supplies.
- 52.216-4 Economic Price Adjustment—Labor and Material.
- 52.216-5 Price Redetermination—Prospective.
- 52.216-6 Price Redetermination—Retroactive.
- 52.216-7 Allowable Cost and Payment.
- 52.216-8 Fixed Fee.
- 52.216-9 Fixed Fee—Construction.
- 52.216-10 Incentive Fee.
- 52.216-11 Cost Contract—No Fee.
- 52.216-12 Cost-Sharing Contract—No Fee.
- 52.216-13 Allowable Cost and Payment—Facilities.
- 52.216-14 Allowable Cost and Payment—Facilities Use.
- 52.216-15 Predetermined Indirect Cost Rates.
- 52.216-16 Incentive Price Revision—Firm Target.
- 52.216-17 Incentive Price Revision—Successive Targets.
- 52.216-18 Ordering.
- 52.216-19 Delivery-Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.217-1 Limitation of Price and Contractor Obligations.
- 52.217-2 Cancellation of Items.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.217-9 Option to Extend the Term of the Contract.
- 52.218 Reserved.
- 52.219-1 Small Business Concern Representation.
- 52.219-2 Small Disadvantaged Business Concern Representation.
- 52.219-3 Women-Owned Small Business Representation.
- 52.219-4 Notice of Small Business-Small Purchase Set-Aside.
- 52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.
- 52.219-6 Notice of Total Small Business Set-Aside.
- 52.219-7 Notice of Partial Small Business Set-Aside.
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
- 52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.
- 52.219-11 Special 8(a) Contract Conditions.
- 52.219-12 Special 8(a) Subcontract Conditions.
- 52.219-13 Utilization of Women-Owned Small Businesses.
- 52.219-14 Limitations on Subcontracting.
- 52.219-15 Notice of Participation by Organizations for the Handicapped.
- 52.219-16 Liquidated Damages—Small Business Subcontracting Plan.
- 52.219-17 Section 8(a) Award.
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
- 52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- 52.219-20 Notice of Emerging Small Business Set-Aside.
- 52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
- 52.219-22 SIC Code and Small Business Size Standard.
- 52.220-1 Preference for Labor Surplus Area Concerns.
- 52.220-2 Notice of Total Labor Surplus Area Set-Aside.
- 52.220-3 Utilization of Labor Surplus Area Concerns.
- 52.220-4 Labor Surplus Area Subcontracting Program.
- 52.221 Reserved.
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 Reserved.
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.

- 52.222-11 Subcontracts (Labor Standards).
- 52.222-12 Contract Termination—Debarment.
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
- 52.222-14 Disputes Concerning Labor Standards.
- 52.222-15 Certification of Eligibility.
- 52.222-16 Approval of Wage Rates.
- 52.222-17 Labor Standards for Construction Work—Facilities Contracts.
- 52.222-18 Reserved.
- 52.222-19 Walsh-Healey Public Contracts Act Representation.
- 52.222-20 Walsh-Healey Public Contracts Act.
- 52.222-21 Certification of Nonsegregated Facilities.
- 52.222-22 Previous Contracts and Compliance Reports.
- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Review.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
- 52.222-29 Notification of Visa Denial.
- 52.222-30 Reserved.
- 52.222-31— 52.222-34 Reserved.
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
- 52.222-36 Affirmative Action for Handicapped Workers.
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
- 52.222-38 Reserved.
- 52.222-39 Reserved.
- 52.222-40 Service Contract Act of 1965, as Amended—Contracts of \$2,500 or Less.
- 52.222-41 Service Contract Act of 1965, as Amended.
- 52.222-42 Statement of Equivalent Rates for Federal Hires.
- 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
- 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
- 52.222-45 Reserved.
- 52.222-46 Evaluation of Compensation for Professional Employees.
- 52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).
- 52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.
- 52.222-49 Service Contract Act—Place of Performance Unknown.
- 52.223-1 Clean Air and Water Certification.
- 52.223-2 Clean Air and Water.
- 52.223-3 Hazardous Material Identification and Material Safety Data.
- 52.223-4 Recovered Material Certification.
- 52.223-5 Certification Regarding A Drug-Free Workplace.
- 52.223-6 Drug-Free Workplace.
- 52.223-7 Notice of Radioactive Materials.
- 52.224-1 Privacy Act Notification.
- 52.224-2 Privacy Act.
- 52.225-1 Buy American Certificate.
- 52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.
- 52.225-3 Buy American Act—Supplies.
- 52.225-4 Reserved.
- 52.225-5 Buy American Act—Construction Materials.
- 52.225-6 Balance of Payments Program Certificate.
- 52.225-7 Balance of Payments Program.
- 52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.
- 52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.
- 52.225-10 Duty-Free Entry.
- 52.225-11 Restrictions on Certain Foreign Purchases.
- 52.225-12—52.225-13 Reserved.
- 52.225-14 Inconsistency Between English Version and Translation of Contract.
- 52.226 Reserved.
- 52.227-1 Authorization and Consent.
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
- 52.227-3 Patent Indemnity.
- 52.227-4 Patent Indemnity—Construction Contracts.
- 52.227-5 Waiver of Indemnity.
- 52.227-6 Royalty Information.
- 52.227-7 Patents—Notice of Government Licensee.
- 52.227-8 Reserved.
- 52.227-9 Refund of Royalties.
- 52.227-10 Filing of Patent Applications—Classified Subject Matter.
- 52.227-11 Patent Rights—Retention by the Contractor (Short Form).
- 52.227-12 Patent Rights—Retention by the Contractor (Long Form).
- 52.227-13 Patent Rights—Acquisition by the Government.
- 52.227-14 Rights in Data—General.
- 52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222-6

quire the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

#### 52.222-5 Reserved.

#### 52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

##### DAVIS-BACON ACT (NOV 1992)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled *Apprentices and Trainees*. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *provided*, That the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) Except with respect to helpers, as defined in section 22.401 of the Federal Acquisition Regulation, the work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

#### 52.222-7 Withholding of Funds.

As prescribed in 22.407(a), insert the following clause:

##### WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

#### 52.222-8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

##### PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work.

Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe



benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

#### 52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

##### APPRENTICES AND TRAINEES (FEB 1988)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any

apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the

job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

#### **52.222-10 Compliance with Copeland Act Requirements.**

As prescribed in 22.407(a), insert the following clause:

##### **COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

#### **52.222-11 Subcontracts (Labor Standards).**

As prescribed in 22.407(a), insert the following clause:

##### **SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)**

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility*, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

52-92 (FAC 90-17)

#### **52.222-12 Contract Termination—Debarment.**

As prescribed in 22.407(a), insert the following clause:

##### **CONTRACT TERMINATION—DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility* may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

#### **52.222-13 Compliance with Davis-Bacon and Related Act Regulations.**

As prescribed in 22.407(a), insert the following clause:

##### **COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

#### **52.222-14 Disputes Concerning Labor Standards.**

As prescribed in 22.407(a), insert the following clause:

##### **DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

#### **52.222-15 Certification of Eligibility.**

As prescribed in 22.407(a), insert the following clause:

##### **CERTIFICATION OF ELIGIBILITY (FEB 1988)**

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is pre-

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222-21

scribed in the U.S. Criminal Code, 18 U.S.C. 1001.  
(End of clause)

**52.222-16 Approval of Wage Rates.**

As prescribed in 22.407(b), insert the following clause:  
APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

**52.222-17 Labor Standards for Construction Work—Facilities Contracts.**

As prescribed in 22.407(d), insert the following clause:

LABOR STANDARDS FOR CONSTRUCTION  
WORK—FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
- (2) Davis-Bacon Act at 52.222-6.
- (3) Withholding of Funds at 52.222-7.
- (4) Payrolls and Basic Records at 52.222-8.
- (5) Apprentices and Trainees at 52.222-9.
- (6) Compliance With Copeland Act Requirements at 52.222-10.
- (7) Subcontracts (Labor Standards) at 52.222-11.
- (8) Contract Termination—Debarment at 52.222-12.
- (9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.
- (10) Disputes Concerning Labor Standards at 52.222-14.
- (11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public

works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

**52.222-18 Reserved.**

**52.222-19 Walsh-Healey Public Contracts Act Representation.**

As prescribed in 22.610(a), insert the following provision in solicitations that will result in contracts covered by the Act. If the solicitation is a Request for Quotation, the terms “quoter” and “quote” may be substituted for “offeror” and “offer.”

WALSH-HEALEY PUBLIC CONTRACTS ACT  
REPRESENTATION (APR 1984)

The offeror represents as a part of this offer that the offeror is ☐ or is not ☐ a regular dealer in, or is ☐ or is not ☐ a manufacturer of, the supplies offered.

(End of provision)

(41 CFR 50-201.1)

**52.222-20 Walsh-Healey Public Contracts Act.**

As prescribed in 22.610(b), insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT  
(APR 1984)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)

(R 7-103.17 1958 JAN)

(R 1-12.605)

**52.222-21 Certification of Nonsegregated Facilities.**

As prescribed in 22.810(a)(1), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the

contract amount is expected to exceed \$10,000:

**CERTIFICATION OF NONSEGREGATED FACILITIES  
(APR 1984)**

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will—

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS  
OF REQUIREMENT FOR CERTIFICATIONS OF  
NONSEGREGATED FACILITIES.**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

(R 7-2003.14(b)(1)(A) 1970 AUG)

(R 1-12.803-10(d))

**52.222-22 Previous Contracts and Compliance Reports.**

As prescribed in 22.810(a)(2), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

**PREVIOUS CONTRACTS AND COMPLIANCE  
REPORTS (APR 1984)**

The offeror represents that—

(a) It ☐ has, ☐ has not, participated in a previous con-  
52-94 (FAC 90-17)

tract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

(R 7-2003.14(b)(1)(B) 1973 APR)

**52.222-23 Notice of Requirement for Affirmative Action  
to Ensure Equal Employment Opportunity.**

As prescribed in 22.810(b), insert the following provision in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be in excess of \$10,000:

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE  
ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY (APR 1984)**

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority  
participation for each trade

Goals for female partici-  
pation for each trade

*[Contracting Officer shall  
insert goals]*

*[Contracting Officer  
shall insert goals]*

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP T&M	CR T&M	LMV	SVC	COM	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2, below.)	19.811-3(b)	C	No	I																				
Alternate I (See Note 2, below.)	19.811-3(b)	C	Yes	I																				
52.219-13 Utilization of Women-Owned Small Businesses.	19.902	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-14 Limitations on Subcontracting (See Note 2, below.)	19.508(e) and 19.811-3(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-15 Notice of Participation by Organizations for the Handicapped.	19.508(f)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-16 Liquidated Damages—Small Business Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-17 Section 8(a) Award. (See Note 2, below.)	19.811-3(c)	C	No	I																				
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2, below.)	19.811-3(d)	C	No	I																				
Alternate I (See Note 2, below.)	19.811-3(d)(1)	C	No	I																				
Alternate II (See Note 2, below.)	19.811-3(d)(2)	C	No	I																				
Alternate III (See Note 2, below.)	19.811-3(d)(3)	C	No	I																				
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1007(a)	P	No	K	A	A				A	A	A	A	A						A				
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1007(b)	P	No	K																			A	
52.219-21 Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.	19.1007(c)	P	No	K																				
52.219-22 SIC Code and Small Business Size Standard.	19.304(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP T&M	CR T&M	LMV	SVC	COM	A-E	FAC	IND DEL	TRN	SP	UTL SVC
52.220-1 Preference for Labor Surplus Area Concerns.	20.103(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.220-2 Notice of Total Labor Surplus Area Set-Aside.	20.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.220-3 Utilization of Labor Surplus Area Concerns.	20.302(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.220-4 Labor Surplus Area Subcontracting Program.	20.302(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.221 Reserved.																							
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I	A		A		A		A		A		A		A		A				
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-5 Reserved.																							
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I							A	A									A		
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I							A	A											
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I							A	A											
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I							A	A											
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I							A	A											
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I							A	A											
52.222-12 Contract Termination —Debarment.	22.407(a)	C	Yes	I							A	A									A		
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I							A	A									A		
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I							A	A									A		

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP T&M	LMV	SVC	COM	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC	
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I								A	A										A	
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I									A											
52.222-17 Labor Standards for Construction Work—Facilities Contracts.	22.407(d)	C	Yes	I																				
52.222-18 Reserved.																								
52.222-19 Walsh-Healey Public Contracts Act Representation.	22.610(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-20 Walsh-Healey Public Contracts Act.	22.610(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A





## PART 22

### APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

#### TABLE OF CONTENTS

- 22.000 Scope of part.
- 22.001 Definition.

#### SUBPART 22.1—BASIC LABOR POLICIES

- 22.101 Labor relations.
  - 22.101-1 General.
  - 22.101-2 Contract pricing and administration.
  - 22.101-3 Reporting labor disputes.
  - 22.101-4 Removal of items from contractors' facilities affected by work stoppages.
- 22.102 Federal and State labor requirements.
  - 22.102-1 Policy.
  - 22.102-2 Administration.
- 22.103 Overtime.
  - 22.103-1 Definitions.
  - 22.103-2 Policy.
  - 22.103-3 Procedures.
  - 22.103-4 Approvals.
  - 22.103-5 Contract clauses.

#### SUBPART 22.2—CONVICT LABOR

- 22.201 General.
- 22.202 Contract clause.

#### SUBPART 22.3—CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- 22.300 Scope of subpart.
- 22.301 Statutory requirement.
- 22.302 Liquidated damages and overtime pay.
- 22.303 Administration and enforcement.
- 22.304 Variations, tolerances, and exemptions.
- 22.305 Contract clause.

#### SUBPART 22.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

- 22.400 Scope of subpart.
- 22.401 Definitions.
- 22.402 Applicability.
- 22.403 Statutory and regulatory requirements.
  - 22.403-1 Davis-Bacon Act.
  - 22.403-2 Copeland Act.
  - 22.403-3 Contract Work Hours and Safety Standards Act.

- 22.403-4 Department of Labor regulations.
- 22.404 Davis-Bacon Act wage determinations.
  - 22.404-1 Types of wage determinations.
  - 22.404-2 General requirements.
  - 22.404-3 Procedures for requesting wage determinations.
  - 22.404-4 Solicitations issued without wage determinations.
  - 22.404-5 Expiration of project wage determinations.
  - 22.404-6 Modifications of wage determinations.
  - 22.404-7 Correction of wage determinations containing clerical errors.
  - 22.404-8 Notification of improper wage determination before award.
  - 22.404-9 Award of contract without required wage determination.
  - 22.404-10 Posting wage determinations and notice.
  - 22.404-11 Wage determination appeals.
- 22.405 Labor standards for construction work performed under facilities contracts.
  - 22.406 Administration and enforcement.
    - 22.406-1 Policy.
    - 22.406-2 Wages, fringe benefits, and overtime.
    - 22.406-3 Additional classifications.
    - 22.406-4 Apprentices and trainees.
    - 22.406-5 Subcontracts.
    - 22.406-6 Payrolls and statements.
    - 22.406-7 Compliance checking.
    - 22.406-8 Investigations.
    - 22.406-9 Withholding from or suspension of contract payments.
    - 22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
    - 22.406-11 Contract terminations.
    - 22.406-12 Cooperation with the Department of Labor.
    - 22.406-13 Semiannual enforcement reports.
- 22.407 Contract clauses.

#### SUBPART 22.5—RESERVED

#### SUBPART 22.6—WALSH-HEALEY PUBLIC CONTRACTS ACT

- 22.601 Definitions.
- 22.602 Statutory requirements.
- 22.603 Applicability.
- 22.604 Exemptions.
  - 22.604-1 Statutory exemptions.
  - 22.604-2 Regulatory exemptions.
- 22.605 Rulings and interpretations of the Act.

- 22.606 Eligibility as a manufacturer or regular dealer.
- 22.606-1 Manufacturer.
- 22.606-2 Regular dealer.
- 22.607 Agents.
- 22.608 Procedures.
- 22.608-1 Offeror's representation.
- 22.608-2 Determination of eligibility.
- 22.608-3 Protests against eligibility.
- 22.608-4 Award pending final determination.
- 22.608-5 Award.
- 22.608-6 Postaward.
- 22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.
- 22.610 Solicitation provision and contract clause.

#### **SUBPART 22.7—RESERVED**

#### **SUBPART 22.8—EQUAL EMPLOYMENT OPPORTUNITY**

- 22.800 Scope of subpart.
- 22.801 Definitions.
- 22.802 General.
- 22.803 Responsibilities.
- 22.804 Affirmative action programs.
- 22.804-1 Nonconstruction.
- 22.804-2 Construction.
- 22.805 Procedures.
- 22.806 Inquiries.
- 22.807 Exemptions.
- 22.808 Complaints.
- 22.809 Enforcement.
- 22.810 Solicitation provisions and contract clauses.

#### **SUBPART 22.9—NONDISCRIMINATION BECAUSE OF AGE**

- 22.901 Policy.
- 22.902 Handling complaints.

#### **SUBPART 22.10—SERVICE CONTRACT ACT OF 1965, AS AMENDED**

- 22.1000 Scope of subpart.
- 22.1001 Definitions.
- 22.1002 Statutory requirements.
- 22.1002-1 General
- 22.1002-2 Wage determinations based on prevailing rates.
- 22.1002-3 Wage determinations based on collective bargaining agreements.
- 22.1002-4 Application of the Fair Labor Standards Act minimum wage.
- 22.1003 Applicability.
- 22.1003-1 General.
- 22.1003-2 Geographical coverage of the Act.
- 22.1003-3 Statutory exemptions.
- 22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

- 22.1003-5 Some examples of contracts covered.
- 22.1003-6 Repair distinguished from remanufacturing of equipment.
- 22.1003-7 Questions concerning applicability of the Act.
- 22.1004 Department of Labor responsibilities and regulations.
- 22.1005 Clause for contracts of \$2,500 or less.
- 22.1006 Clauses for contracts over \$2,500.
- 22.1007 Requirement to submit Notice (SF 98/98a).
- 22.1008 Procedures for preparing and submitting Notice (SF 98/98a).
- 22.1008-1 Preparation of Notice (SF 98/98a).
- 22.1008-2 Preparation of SF 98a.
- 22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.
- 22.1008-4 Procedures when place of performance is unknown.
- 22.1008-5 Multiple-year contracts.
- 22.1008-6 Contract modifications (options, extensions, changes in scope) and anniversary dates.
- 22.1008-7 Required time of submission of Notice.
- 22.1009 Place of performance unknown.
- 22.1009-1 General.
- 22.1009-2 Attempt to identify possible places of performance.
- 22.1009-3 All possible places of performance identified.
- 22.1009-4 All possible places of performance not identified.
- 22.1010 Notification to interested parties under collective bargaining agreements.
- 22.1011 Response to Notice by Department of Labor.
- 22.1011-1 Department of Labor action.
- 22.1011-2 Requests for status or expediting of response.
- 22.1012 Late receipt or nonreceipt of wage determination.
- 22.1012-1 General.
- 22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.
- 22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.
- 22.1012-4 Response to late submission of Notice—no collective bargaining agreement.
- 22.1012-5 Response to late submission of Notice—with collective bargaining agreement.
- 22.1013 Review of wage determination.
- 22.1014 Delay of acquisition dates over 60 days.
- 22.1015 Discovery of errors by the Department of Labor.
- 22.1016 Statement of equivalent rates for Federal hires.
- 22.1017 Notice of award.
- 22.1018 Notification to contractors and employees.
- 22.1019 Additional classes of service employees.
- 22.1020 Seniority lists.
- 22.1021 Substantial variance hearings.

- 22.1022    Withholding of contract payments.
- 22.1023    Termination for default.
- 22.1024    Cooperation with the Department of Labor.
- 22.1025    Ineligibility of violators.
- 22.1026    Disputes concerning labor standards.

**SUBPART 22.11—PROFESSIONAL EMPLOYEE  
COMPENSATION**

- 22.1101    Applicability.
- 22.1102    Definition.
- 22.1103    Policy, procedures, and solicitation provisions.

**SUBPART 22.12—RESERVED**

**SUBPART 22.13—SPECIAL DISABLED AND  
VIETNAM ERA VETERANS**

- 22.1300    Scope of subpart.
- 22.1301    Policy.
- 22.1302    Applicability.

- 22.1303    Waivers.
- 22.1304    Department of Labor notices and reports.
- 22.1305    Collective bargaining agreements.
- 22.1306    Complaint procedures.
- 22.1307    Actions because of noncompliance.
- 22.1308    Contract clauses.

**SUBPART 22.14—EMPLOYMENT OF THE  
HANDICAPPED**

- 22.1400    Scope of subpart.
- 22.1401    Policy.
- 22.1402    Applicability.
- 22.1403    Waivers.
- 22.1404    Department of Labor notices.
- 22.1405    Collective bargaining agreements.
- 22.1406    Complaint procedures.
- 22.1407    Actions because of noncompliance.
- 22.1408    Contract clause.

